

**IN THE COURT OF CRIMINAL APPEALS OF TEXAS
SITTING AT AUSTIN, TEXAS**

THOMAS DIXON

§

FILED
COURT OF CRIMINAL APPEALS
2/11/2020
DEANA WILLIAMSON, CLERK

VS.

§

NO. PD-0048-19

THE STATE OF TEXAS

§

**STATE'S RESPONSE OBJECTING TO APPELLANT'S MOTION TO
STAY MANDATE**

TO THE HONORABLE COURT OF CRIMINAL APPEALS:

The State of Texas, Appellee, in response to Appellant's Motion to Stay Mandate, objects to Appellant's motion on all grounds, and in support shows the Court as follows:

I.

On November 18, 2015, a jury found Appellant guilty of two counts of capital murder. On December 13, 2018, the Seventh Court of Appeals reversed Appellant's convictions and remanded the case for a new trial. Appellant filed a Motion for Bond Pending the Final Determination of His Appeal in the Seventh Court of Appeals, asking that bail be set at \$100,000. The State responded to Appellant's motion and asked the court to set bail at \$2 million. On January, 16, 2019, the Seventh Court of Appeals set Appellant's bail at \$2 million.

On February 11, 2019, the State filed a Petition for Discretionary Review in the Court of Criminal Appeals. This Court granted review, and following briefing by both parties, reversed the Seventh Court of Appeals opinion and remanded the case for resolution of the remaining issues on appeal. On January 30, 2020, Appellant filed a Motion for Rehearing, which is still pending before this Court.

II.

A defendant sentenced to ten or more years upon the conviction of a felony is not entitled to bail pending appeal from that conviction. TEX. CODE CRIM. PROC. art. 44.04(b). Only when a conviction is reversed and final determination of a motion for discretionary review is pending may a defendant be released on bail pending appeal. Texas Code of Criminal Procedure article 44.04(h) provides, in part:

if a conviction is reversed by a decision of a court of appeals, the defendant, if in custody, is entitled to release on reasonable bail, regardless of the length of term of imprisonment, pending final determination of an appeal by the state or the defendant on a motion for discretionary review.

TEX. CODE CRIM. PROC. art. 44.04(h). Following this Court's opinion on the State's Petition for Discretionary Review and the forthcoming issuance of mandate, that final determination by this Court is no longer pending. As a result, Appellant is no longer eligible for bail on appeal. TEX. CODE CRIM. PROC. art. 44.04(b); *see Tucker v. State*, 286 S.W.3d 558, 560 (Tex. App.—Corpus Christi-Edinburg 2009, no pet.). Appellant will suffer no irreparable injury because following this Court's opinion, his conviction is no longer reversed. Appellant has no remaining right to remain on bond pending a petition

for writ of certiorari to the United States Supreme Court. Further, Appellant has not identified what undue hardship he will suffer beyond incarceration following the initial reversal of his conviction, which has been undone following this Court's opinion. *See* TEX. R. APP. PRO. 18.2 (authorizing a stay of mandate upon a finding that the grounds for the stay are substantial and that the petitioner would incur serious hardship from the mandate's issuance if the United States Supreme Court were to later reverse the judgment).

III.

Texas Rule of Appellate Procedure 18.1 provides that the clerk of the court rendering judgment must issue mandate in accordance with the judgment when one of the statutorily prescribed periods expires. *See* TEX. R. APP. PRO. 18.1. When a case is pending before this Court, mandate must issue "ten days after the time has expired for filing a motion to extend time to file a motion for rehearing if no timely filed motion for rehearing or motion to extend time is pending." TEX. R. APP. PRO. 18.1(c). Appellant timely filed a motion for rehearing, which remains pending before this Court. The State requests that this Court issue mandate immediately upon ruling on Appellant's pending Motion for Rehearing.

WHEREFORE, PREMISES CONSIDERED, the State respectfully requests that mandate issue immediately upon this Court's ruling on Appellant's pending Motion for Rehearing. The State further requests that this Court deny Appellant's Motion for Stay of Mandate on all grounds.

Respectfully submitted,

K. SUNSHINE STANEK

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By: /s/ Lauren Murphree

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CERTIFICATE OF SERVICE

I certify that a true copy of the foregoing State's Response Objecting to Appellant's Motion to Stay Mandate has been delivered to Cynthia Orr, Attorney for Appellant, by electronic transmission via e-File Texas, on February 10, 2020.

K. SUNSHINE STANEK

Criminal District Attorney

State Bar No. 24027884

By: /s/ Lauren Murphree

Lauren Murphree